

LAKE COUNTY BOARD of ADJUSTMENT
May 8, 2019
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Frank Mutch, Steve Rosso

STAFF PRESENT: Jacob Feistner, Rob Edington, Clint Evenson, Tiffani Murphy, Lita Fonda

Don Patterson called the meeting to order at 3:34 pm

FUNK VARIANCE—FINLEY POINT (3:34 pm)

Clint Evenson presented the staff report. (See attachments to minutes in the May 2019 meeting file for staff report.)

Clint clarified that a ramada structure was a dry structure similar to a gazebo. The eaves on the west side were potentially on the property line. He referred to site plan and photos. The guest house was being changed on the eastern portion, which was on the applicant's lot. Per the survey, a portion of the western portion of the garage could be on the applicant's lot. The garage was created in 1963, before the lot creation in 1965. Frank asked about stormwater from the roof running onto the neighbor's property. Clint said that was why he opened that conversation. Nothing was being changed with the structure and they hadn't received complaints about the stormwater.

Agent Earl Hanneman from Carstens introduced Wayne Funk and addressed the stormwater. They'd discussed putting in a rain gutter in to bring it to the front, then downspout it in to the ground. They didn't have a problem with a condition to do this.

Public comment opened: None offered. *Public comment closed.*

Steve asked if they'd figured out how to add the sewer, water and related items without crossing over onto the neighbor's property in the back of the building. Wayne Funk described how this would be done. Their structural engineer said they could do this without destroying a significant part of the structure. Earl added they were working on a septic system for the addition. Regarding pg. 3, condition #9, Steve and Frank suggested adding 'or any related construction' after 'guest quarters'. Clint agreed.

Motion made by Steve Rosso, and seconded by Frank Mutch, to approve the variance with the changed conditions and terms and to accept the findings of fact. Motion carried, all in favor.

WILLIAMS CONDITIONAL USES—EAST SHORE (3:50 pm)

Rob Edington noted that Justin Tollefson, one of the project architects, was here. Rob presented the staff report. (See attachments to minutes in the May 2019 meeting file for staff report.) Regarding #11 on pages 3-4, Rob referred to the handouts from the

architect for the calculations based on post-construction. (See attachments to minutes in the May 2019 meeting file for the handouts.) Rob corrected two errors. Two recommendations were omitted from the recommended conditions. These were regarding the 50-foot vegetative buffer and the stormwater management plan that Slopeside Engineering reviewed and approved, [and] the proposed stormwater plans for slope stability. On pg. 11 and 12, he didn't have language drafted. Recommended conditions on pg. 11 and 12 could be modified or it could be covered under the existing conditions. He turned to the impervious surface conditional use request for coverage up to 47%. With the additional information from the architect, it showed total impervious surface coverage after [granting of] the slope disturbance would qualify for a zoning conformance permit and would not [need] a conditional use, on which Jacob might have further recommendation. The way the terms and conditions were noted, it would cover it either way. He read item #7 on pg. 10, which was specific to the impervious surface request and listed some options.

Steve turned to the question on the vegetation plan and the stormwater management plan. Rob clarified that typically if development would occur within the 50-foot zone, staff would require that a vegetation plan be submitted. Because of the disturbance of slopes over 25%, it was also important that vegetation was planted throughout the lot for slope stability. He confirmed for Steve that there might be a vegetative buffer in addition to the vegetation plan. Rob showed a plan that was submitted with the lakeshore to the Board. It included a vegetative buffer up to 50 feet. The other requirement would be that the remainder of the lot have some sort of vegetation. It would be up to the Board whether a detailed plan would be required for the remainder of the lot. A condition should be included that they have some sort of vegetation after the disturbance of slopes. Not all of the disturbed slopes would be under where the buildings were. [Some] was associated with the pathway going down to the lower part of the lot and slopes below the structures and so forth. Rob clarified that a conditional use was not required for a 50-foot vegetative buffer plan but it might be a condition of approval. If it wasn't, he assumed they would require it as part of the zoning conformance permit.

On pg. 8 in 4.c, Rob clarified for Steve that 'the v' in the second line was supposed to be 'the geotechnical report from Slopeside Engineering'.

Frank asked about the soils and existing vegetation. Rob believed there was a spring or some sort of drainage on the property and that with the existence of a significant amount of moisture, slope stability was a concern. He mentioned a house that slid into the lake in that area.

Justin Tollefson, agent from Pearson Design Group, answered questions. The vegetative plan and buffer were acceptable. They would have a landscaped restoration plan for the full site.

Public comment opened: None offered. *Public comment closed.*

Steve suggested additional changes:

- Pg. 8, 4.f: Add ‘and to buffer groundwater migrating toward the lake.’
- Pg. 10: Eliminate #7 if the applicant doesn’t need it. After discussion, he asked the agent if they were good with 29% and not needing a conditional use, who confirmed. Frank checked about the original request for 47%. Steve described that the 47% was calculated before slope disturbance was taken into account. If they were allowed to disturb slopes, the amount of buildable area would increase significantly after that, and impervious surface would be less than 29%.
- Pg. 10, item 2: At the end, add ‘This approval allows for impervious surface coverage up to 29%.’

Don moved to pg. 11 and the questions on conditions #11 (stormwater management) and #12 (vegetation plan). Rob identified that he had a stormwater management plan as well as a geotechnical report. He conversed with Shawn Rowland earlier in the day about that [stormwater] condition, who was fine with that. The main item was based on the infiltrator locations; a couple were located downslope. The geotechnical report said no discharge of drain water downslope. He wanted to make sure that was interpreted correctly. They might need to take the stormwater to the other side of the property—that was a question for Josh Smith of Slopeside Engineering. Frank thought the condition covered it. Steve agreed they should leave both of those conditions.

Steve: pg. 10, 1st paragraph: Remove ‘and impervious surface area covering between 30 and 49 percent of the buildable area of the lot’.

Frank: pg. 4, 2nd line: Add ‘impermeable surface of’ between ‘of’ and ‘neighboring’.
Jacob noted they didn’t need to correct the report although it was good to understand it.

Motion made by Steve Rosso, and seconded by Frank Mutch, to approve the conditional use for disturbance of slopes with modified findings of fact and conditions. Motion carried, all in favor.

SPRUNK CONDITIONAL USE—FINLEY POINT (4:30 pm)

Tiffani Murphy explained that yesterday this item was postponed until further notice. The applicants wanted to make amendments. Notice would be rerun when it came back. Joe and Tracy McDonald were in attendance for this item and spoke with the Board.

Public comment opened:

Joe McDonald had talked to Eric Sprunk, who spoke of the building being 1,200 square feet. It was 40 x 80 for 3,200 square feet in the application. Maybe that was what [the applicants] were changing. Their concern was at the construction site, two weddings had been held last summer with bands and dances. They hadn’t been there but other neighbors complained about the noise. For [the] weddings, parking occurred along S. Finley Point Road, which blocked traffic. Eric had told him they were supposed to park at the cherry warehouse and arrange transportation. They hadn’t done it. He thought those were concerns of the neighbors that had to be dealt with. His and Tracy’s concern was this was a toy barn, and that needed to be defined. Eric mentioned storing some wave runners and 4-wheelers. Having a 3,200 square foot building gave rise to the

concern of public or big events there. The reason he and Tracy lived on Finley Point was the beauty of the area. S. Finley Point Road was a nice drive. Cutting the trees down to put a big barn there took away from that.

Tracy added a concern. This was a beautiful lot with rich eagle habitat. They'd been good neighbors and watched over the lot. Eric seemed like a very nice fellow. The [house] was so big now that boaters were coming up to ask when the hotel/restaurant was opening. There were 3 docks with 4 slips, a huge boathouse, another boathouse, and a huge home for guests. This was beautifully done but it had been a 2-year build and no one had even let neighbors know what was going on. She and Joe were trying to be good neighbors but now the applicants were asking for another huge structure on top called a toy barn and she and Joe weren't sure what that meant, given the size, when they already had two huge boathouses down below. The other neighbors had complained to Joe and her about the road blockage and noise although they hadn't been there. They were concerned this would turn into a wedding venue. Joe said Eric assured him there wouldn't be more weddings. He recommended giving it a couple of years to see what kind of neighbor Eric was, and then maybe give permission for the huge toy barn or else get a reasonable size for it. The applicant had a sewer connected with it. It had the makings for use. Tracy said the good thing was they had been in communication with Eric, which happened because they'd done this [comment letter]. She noted they were speaking up for the neighbors, too.

Regarding the property line where the boathouse was, Joe said they dug a huge cut right on the line. Eric wasn't aware of that and they would meet about that on Memorial Day to see what he planned to do.

Steve commended the McDonalds for paying attention to their neighborhood. The reality was the Planning Dept. and its boards couldn't do all of the enforcing and policing on their own, and it took neighbors to let the staff know where questions arose on permitting and so forth.

Tracy noted the applicant might be a super guy but they didn't know that yet. It had just been a 2-year build of a mansion. She explained that they had a little changing area for their children right by the boundary line. One day they found a 10-foot drop straight down very near the door of the changing area. There was no heads up beforehand from the neighbors, so now they didn't trust. Steve thought it was important for the McDonalds to keep in touch with the Sprunks, and let them know they were paying attention and interested in what happened in the neighborhood, and [it would help] if he were more open about his plans instead of surprising the neighbors.

Frank said most of their concerns weren't covered in the zoning. Tracy agreed. Frank said disturbing the peace was covered by calling the sheriff. One of the best things to do was what they were doing, to talk to the neighbors, to resolve most issues. He disagreed that people had to report their neighbors. Rich people had discovered Finley Point, which changed the complexion and demographics. He listed some irritations and concerns that

the regulations didn't cover. They all had to put up with stuff they didn't like. Fortunately the winters were long.

Tracy thought Eric wanted to be a good neighbor. It was good to hear they were reevaluating the application.

Public comment closed.

STEENBERG CONDITIONAL USE—LAKE MARY RONAN (4:42 pm)

Rob Edington introduced Tom & Mary Steenberg and presented the staff report. (See attachments to minutes in the May 2019 meeting file for staff report.) With regard to #7 on pg. 3, Rob added short-term rentals (STR's) were called vacation rentals for the state license and different departments used different terms. For pg. 8, #14 he pointed out that if the zoning was amended, the terms and conditions that were approved today would apply. If the permit was revoked or if the property was sold, then the zoning regulations of that future time would apply. He noted condition #16 regarding a contact would need to be met prior to issuance of the zoning conformance permit. He thought the applicants had chosen to apply for the conditional use so they might be able to operate this summer in compliance even in the event that the zoning amendment wasn't approved.

On #11 on pg. 8, Frank asked for clarification. Steve related this to the maximum capacity in #5. Septic sizing was based on the number of bedrooms but didn't say how many people per bedroom. He gave the example where 40 people showed up and rolled out sleeping bags on the floor. This would likely be a challenge as they worked on the zoning regulations, where the neighbors would want to know the maximum number of people. Jacob described that many places used the same language that was here, and left it up to the sewer capacity. One county in Colorado talked about 2 people per bedroom. Another community called it a 'two plus three', which meant 2 people per bedroom plus 3 others, so if you had 4 bedrooms you could have 11 people. Other communities tied it to square footage, such as 1 person for every 150 square feet of living area. There were a lot of different ways to approach it. He and Steve had talked about 3 people per bedroom. Steve explained that DEQ apparently assumed the average number of people in a bedroom for septic sizing was 2.5, which they'd talked about rounding up to 3, or maybe 4. A 3-bedroom house and 12 people for a long weekend or a week didn't seem unusual. Twenty or 30 people was a problem. They needed to pick a number that was reasonable for the market but excluded the college fraternity house type of thing. Jacob thought they had leeway tonight, since this was a one-time deal.

Frank said he didn't like formulas. He thought a performance base was more reasonable, where you didn't pollute or exceed the capacity of the sewer system. Anyone would want to conform to that. There were a lot of variables for sewer systems and he didn't think a flat number would answer for those. The renters' impacts were far beyond what was in zoning. He listed a number of problems that occurred. Quality of life on the lake was an issue and renters certainly degraded that but on the other hand, it was tough to survive economically in Montana. He thought these were onerous as it was. Steve agreed with much of that but the problem was in trying to apply it. Most people would

ask what it meant or how to do that if they were asked to rent out their places and limit the capacity so they didn't pollute or overuse the septic field. One problem in the County was with homes with septic fields put in prior to 1969 when permitting started. The people living at the house could still flush the toilet so they perceived it as okay. It wasn't reasonable to ask the involved homeowners or renters to determine themselves when they'd exceeded the capacity of the septic system. Frank referred to a method involving dye.

Jacob said they chose to leave condition #5 about maximum capacity as general as it was because the biggest criticism of these and other regulations was that they weren't enforceable. Who would be in the house counting the number of heads? If a house was allowed 8, Steve said the neighbors wouldn't know if there were 9 or 10, but they would know if there were 40. If they called, something could be done. If there was no number and 40 showed up and the neighbors called, the answer would be there's no limit on the number. Jacob countered that if there were 40, they would be making disturbing noise and there wouldn't be adequate parking. Other things would come into play that were already covered. Steve said by putting a number on it, people would know there was a limit and a problem would be less likely, so there would be fewer phone calls. Frank checked about fire codes and maximum fire capacity. Steve thought the numbers would be huge, with 5 or 10 square feet per person. Rob recommended checking with the applicants to find out their comfort level. They could add an additional buffer for overflow if that was appropriate. That might resolve this conditional use.

Tom Steenburg said this issue had come up. Their number was 8. If someone wanted to bring an infant or toddler [in addition], was that going to happen? Mary Steenburg said no. Frank suggested 12. Tom said they were very concerned about the effect on neighbors and spoke to their neighbors, one of whom provided comment. Some concerns were alleviated when he told them that they had turned people away. Another was alleviated by the condition that if they sold the place, this was nontransferable. They didn't intend to sell. They intended to live there year-round at some point. They'd heard about these same issues [stemming from the number of people] at other rentals, which was part of their rationale for going with 8 for their 3 bedrooms. Mary added that people asked about bringing campers and they said no. Steve thought they sounded like responsible renters who didn't want the house trashed either. He hoped more people would be like them instead of commercial people far away who didn't care if the house got trashed. He suggested they could put in 10 for the number instead of 8, and the owners could use 8 as their number and they would have a little bit of buffer. Frank wanted to put 12 so Steve added 'or a maximum of 12 guests' on pg. 7, #5 after 'sewer system as'. Jacob suggested changing to it say 'not to exceed 2 times the maximum capacity'. Steve agreed: maximum capacity or permitted guests. He suggested 'for a maximum of 12 guests. Jacob asked if this was for the weekend or maximum. If 2 people rented it, could they have 24 guests? Steve said if there were a special event, it could have twice the 12 (i.e. 24) as the number of allowed guests. Frank thought that was reasonable for an event. Jacob gave the example of 2 people renting, then inviting 11 other couples to dinner. That was 12 vehicles. Frank mentioned weddings. Rob said this approval didn't mean the owners had to allow this number; they could limit it to 8

[instead of 12]. In case a special situation came up, the approval would be in place. Frank agreed the owners could be more stringent.

Frank turned to item 16 on pg. 8. He was concerned that Lake Mary Ronan was hard to get to in an hour unless you were already there. Tom said they'd thought about this. Mountain Meadows Resort was next door. They had a great relationship with those folks and planned to talk to them to fulfill this condition. The Mountain Meadows Resort people worked hard and were there 24/7. Otherwise they'd have a hard time getting there in an hour, as they lived in Missoula right now.

Don mentioned public comment.

Motion made by Frank Mutch, and seconded by Steve Rosso, to approve the conditional use subject to the terms and conditions in the report as written and as modified, and the findings of fact. Motion carried, all in favor.

Tom appreciated and thanked the staff. Mary added they felt supported.

BRYAN CONDITIONAL USE—EAST SHORE (5:18 pm)

Tiffani Murphy presented the staff report. (See attachments to minutes in the May 2019 meeting file for staff report.)

Tiffani verified and clarified items in response to questions. The owners understood they couldn't use the old septic system. When she last spoke to Anna Baxter in Environmental Health, the owners were considering doing a full new septic system. Their options were to scrap construction plans that had sewer and water or to put in a new system. The owners also understood the 5-month limit [for the temporary dwelling on a seasonal basis]. East Shore [regulations were for] 5 month on and 30 days off for these. The other route was to apply to use [the RV] for 2 years straight and then remove permanently. They actually lived out of the county and couldn't be here 2 years straight. They want to work on it in the summer. If they had opted for the 2-year option, they could still store it on the property.

Don asked if the neighbors who objected to the septic system understand that it couldn't be used. Tiffani replied that at that point, staff didn't notice the neighbors about Environmental Health comments because they didn't have anything in writing from Environmental Health to send out. She'd encouraged the neighbors she spoke with to voice their concerns and opinions in writing in order to have that on record. The neighbors hadn't seen the staff report, which was done after public comment was received. Frank noted one didn't want it at all and had concerns how it would be emptied.

Steve listed some corrections:

Page 6, 4.vii: In the 3rd line, 'approve' changed to 'approval'.

Page 8, #6: Remove 'be' from 'must be direct'.

Motion made by Frank Mutch, and seconded by Steve Rosso, to approve the conditional use as in the report with changes as given for the findings of facts and conditions. Motion carried, all in favor.

MINUTES -Deferred

OTHER BUSINESS (5:30 pm)

Don shared comments and concerns he'd received regarding construction about a remodel. The group also discussed nomenclature and recent usage of 'toy barn', which was equivalent to dry storage facility.

Don Patterson, chair, adjourned the meeting at 5:35 pm.